

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

v.

TRAVARIS PERKINS,

Defendant.

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CASE NO. 5:14-CR-221

OPINION & ORDER
[Resolving Doc. [37](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On March 21, 2016, Travaris Perkins requested the appointment of counsel to assist with filing a habeas motion under Title 28 United States Code Section 2255 in light of the Supreme Court's June 2015 decision in *Johnson v. United States*.¹ This Court has reviewed the merits of Perkins' potential *Johnson* claim and **DENIES** the motion for appointment of counsel.

I. Discussion

The appointment of counsel in a civil proceeding is not a constitutional right and is justified only by exceptional circumstances.² Section 2255 habeas petitions are civil actions.

As an initial matter, this Court already denied the appointment of counsel as to Travaris Perkins on February 16, 2016.³

Perkins would only have a potentially viable *Johnson* claim if his base offense level was increased because of a prior conviction that was a crime of violence only under the residual clause. *Johnson* does not change the career offender decisions involving felony drug convictions and categorical violent crimes.

¹ [Johnson v. United States, 135 S. Ct. 2551 \(2015\)](#) (holding that imposing an increased sentence under the residual clause of the Armed Career Criminal Act (ACCA) violates the Constitution's guarantee of due process).

² [Lavado v. Keohane, 992 F.2d 601, 606 \(6th Cir. 1993\)](#).

³ Doc. [33](#).

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In calculating Travaris Perkins' base offense level, the pre-sentence report listed two "felony convictions of either a crime of violence or a controlled substance offense . . .

Specifically, the defendant was convicted of Corrupting Another with Drugs (F4) in Summit County Court of Common Pleas, Case No. CR-2005-01-0218 and Trafficking in Cocaine (F4) in Summit County Court of Common Pleas, Case No. CR-2008-05-1537."⁴

The controlled substance offenses, Trafficking in Cocaine and Corrupting Another with Drugs, are not affected by the *Johnson* decision because they were not classified as a crime of violence.

Moreover, a closer examination of Perkins' PSR reveals that he was sentenced for a number of other felony controlled substance offenses.⁵

Thus, Perkins' guidelines calculation would not be affected post- *Johnson* because the pre-sentence report still lists at least two felony convictions for a controlled substance offense.

Further, in his plea, Perkins waived a collateral attack of this type.⁶ And Perkins' sentence of 82 months was below the statutory maximum prescribed by the Felon in Possession statute 18 U.S.C. §§ 922(g)(1) and 924(a)(2).⁷

Perkins has not shown that he has a meritorious *Johnson* claim. He cannot demonstrate that his civil §2255 proceeding is an exceptional circumstance warranting appointment of counsel.

⁴ Presentence Investigation Report at ¶12.

⁵ Trafficking in Cocaine (F5) in Summit County Court of Common Pleas, CR-2014-07-1939; Possession of Cocaine (F4) and Aggravated Possession of Drugs (F5) in Summit County Court of Common Pleas, CR-2012-01-0158; Possession of Cocaine (F5) in Summit County Court of Common Pleas, CR-2007-11-3796.; Trafficking in Marijuana (F5) in Summit County Court of Common Pleas, CR-2007-05-1468.

⁶ Doc. [18](#) at 49-50.

⁷ Doc. [24](#).

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II. Conclusion

For the reasons above, this Court **DENIES** Defendant's motion seeking the appointment of counsel.

IT IS SO ORDERED.

Dated: March 25, 2016

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE